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| 10/676,284      | 10/01/2003  | Steven Phillip Gologorsky | 620-022US           | 7073             |

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| EXAMINER |
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ROBINSON, KITO R

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12/07/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/676,284 | <b>Applicant(s)</b><br>GOLOGORSKY ET AL. |  |
|                              | <b>Examiner</b><br>Kito R. Robinson  | <b>Art Unit</b><br>4143                  |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/14/2005</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Status of Claims**

1. This action is in reply to the application filed on 10/01/2003.
2. Claims 1 & 2 have been amended.
3. Claims 1-20 are currently pending and have been examined.

### **Drawings**

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Figure 7A, B & C do not have labels or reference numbers needed to understand the drawings. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

**Claim Rejections - 35 USC § 112**

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This claim is a negative type claim and the metes and bounds of the present invention cannot be determined. Subject matter that is not mentioned will not be included in the metes and bounds of the present invention, therefore the claim language *method of claim 1 wherein neither said first auction variable nor said second auction variable represents quantity* is not needed.

**Claim Rejections - 35 USC § 102**

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-3, 5, 10 & 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Abdou US 2002/0107773 [Abdou '773].

**As per claim 1,**

Abdou '773 discloses,

- *publishing from a data processing system a relationship between a first auction variable and a second auction variable (See at least Fig. 1,2, &3: Take note transaction provider equals auction solicitor).*
- *selecting at said data processing system a winning bid in said auction, wherein the selection of said winning bid is dependent on said first auction variable (See at least Para. 0038).*

**As per claim 2,**

Abdou '773 discloses:

- *The method of claim 1 wherein neither said first auction variable nor said second auction variable represents quantity. (See at least Para. 0038: Take note the selection criterion does not mention quantity).*

**As per claim 3,**

Abdou '773 discloses:

- *The method of claim 1 wherein said first auction variable is delivery schedule and said second auction variable is price (See at least Par. 0038)*

**As per claim 5,**

Abdou '773 discloses:

- *The method of claim 1 wherein said first auction variable is a measure of quality and said second auction variable is price (See at least Para 0038).*

**As per claim 10,**

Abdou '773 discloses:

- *The method of claim 1 wherein the data processing system calculates the value of said second auction variable based on said first auction variable and said relationship for each bid as it is received, and makes available said value of said second auction variable for display to one or more bidders (See at least Para. 0010: Take note a method and apparatus that provides a electronic commerce environment and the order is presented for bidding to a plurality of interested venders).*

**Claim Rejections - 35 USC § 103**

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abdou '773, and further in view of Aggarwal et al. US 6,151,589 [Aggarwal '589].

**As per claim 4,**

Abdou '773 discloses all limitations in claim 1 but does not disclose the limitations in claim 4. However, Aggarwal '589 discloses:

- *Wherein said first auction variable is time to complete and said second auction variable is price* (See at least Column 3 line 9-11).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to associate first & second variables of Abdou '773 to the teachings of time completed and price of Aggarwal '589 so that the time intervals for the auctions are adjusted in such a way that auctions are not so slow, that buyer's timed bids are excluded (Column 2 line 34-37).

10. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abdou '773 as applied to in claim 1, and further in view of "Reviewing and Analyzing Service Contracts" by Kenneth Williams [Williams].

**As per claim 6,**

Abdou '773 discloses all limitations in claim 1 but does not disclose the limitations in claim 6-8. However, [Williams] teaches:

- *The method of claim 1 wherein said first auction variable is price and said second auction variable is warranty period* (See at least page 2).

**As per claim 7,**

In Addition, Williams teaches:

- *The method of claim 1 wherein said first auction variable is price and said second auction variable is service contract price* (See at least page 2).

**As per claim 8,**

Moreover, Williams teaches:

- *The method of claim 1 wherein said first auction variable is price and said second auction variable is service contract scope (See at least page 2).*

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine first & second variables of Abdou '773 with the teachings of warranties and service contracts by Williams because it is an assurance by the vendor that the products or services are as represented or will be as promised.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abdou '773 as applied to in claim 1 above, and further in view of "Test Drive RFPHere.com Free for Three Months" by *Business Editors*.

**As per claim 9,**

Abdou '773 discloses all the limitations in claim 1 but does not disclose the following limitation in claim 9. However, *Business Editors* teaches:

- *The method of claim 1 wherein said first auction variable is price and said auction variable is the provision of one or more articles free of charge (See at least page 2).*

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the first and second variables of Abdou '773 with the teachings of price and articles free of charge by *Business Editors* because it provides companies to easily establish a presence on the Internet to sell their new, used, refurbished, and surplus products to businesses nationwide (See at least page 2).



12. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abdou '773 as applied to in claim 1 above, and further in view of Kinney, JR. et al. US 6,871,191 B1 [Kinney '191].

**As per claim 11,**

Abdou '773 discloses:

- *publishing from a data processing system a relationship between a first auction variable and a second auction variable* (See at least Fig. 1, 2, & 3: Take note transaction provider equals auction solicitor).

Abdou '773 does not disclose the following limitation, however Kinney '191 teaches:

- *wherein said relationship is such that a change in said first auction variable in a direction that is favorable to said auction solicitor induces a change in said second auction variable in a direction that is favorable to a bidder* (See at least Table 1 & Table 2: Take note that as the solicitor benefits by increasing the price the quantity also increase which benefits the bidder).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the characteristic of favorable solicitor and bidder variables of Kinney '191 with the teaching of Abdou '773 restricting the set of potential suppliers (benefit in favor of auctioneers) also limits the auction dynamic, often lowering prices for a smaller volume (benefit in favor of bidders) (Column 5 line 54-59).

Furthermore, Abdou '773 discloses:

- *selecting at said data processing system a winning bid in said auction based on said first auction variable* (See at least Para. 0038).

13. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abdou '773/Kinney '191 as applied to in claim 11, and further in view of "Reviewing and Analyzing Service Contracts" by Kenneth Williams [Williams].

**As per claim 15,**

Abdou '773/Kinney '191 discloses all limitations in claim 11 but does not disclose the limitations in claim 15-17, however [Williams] teaches:

- *The method of claim 11 wherein said first auction variable is price and said second auction variable is warranty period (See at least page 2).*

**As per claim 16,**

In Addition, Williams teaches:

- *The method of claim 11 wherein said first auction variable is price and said second auction variable is service contract price (See at least page 2).*

**As per claim 17,**

Moreover, Williams teaches:

- *The method of claim 11 wherein said first auction variable is price and said second auction variable is service contract scope (See at least page 2).*

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine first & second variables of Abdou '773/Kinney '191 with the teachings of warranties and service contracts by Williams because it is an assurance by the vendor that the products or services are as represented or will be as promised.

14. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abdou '773/Kinney '191 as applied to in claim 11 above, and further in view of "Test Drive RFPHere.com Free for Three Months" by *Business Editors*.

**As per claim 18,**

Abdou '773/Kinney '191 discloses all the limitations in claim 1 but does not disclose the following limitation in claim 9. However, *Business Editors* teaches:

- *The method of claim 11 wherein said first auction variable is price and said auction variable is the provision of one or more articles free of charge (See at least page 2).*

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the first and second variables of Abdou '773/Kinney '191 with the teachings of price and articles free of charge by *Business Editors* because it provides companies to easily establish a presence on the Internet to sell their new, used, refurbished, and surplus products to businesses nationwide (See at least page 2).

15. Claim 19 & 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abdou '773/Kinney '191 as applied to in claim 11 above.

**As per Claim 19,**

Kinney '191 Discloses:

- *The method of claim 11 wherein said first auction variable is quantity and said second auction variable is price (See at least Table 1).*

**As per claim 20,**

Abdou '773 discloses:

- *The method of claim 11 wherein the data processing system calculates the value of said second auction variable based on said first auction variable and said relationship for each bid as it is received, and makes available said value of said second auction variable for display to one or more bidders (See at least Para. 0010: Take note a method and apparatus that provides a electronic commerce environment and the order is presented for bidding to a plurality of interested venders).*

### **Conclusion**

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **Kito Robinson** whose telephone number is **571.270.3921**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **James Reagan** can be reached at **571.272.6710**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> . Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

Any response to this action should be mailed to:

**Commissioner of Patents and Trademarks**

**Washington, D.C. 20231**

or faxed to **571-273-8300**.

Hand delivered responses should be brought to the **United States Patent and Trademark Office Customer Service Window:**

Randolph Building  
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/Kito R Robinson/Examiner, Art Unit 4143

05 December 2007

/James A. Reagan/Supervisory Patent Examiner, Art Unit 3621